IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.5213 OF 2005

Ambadas Krishaji Karampuri & Anr. ...Petitioners.

Vs.

Jagannath Virayya Sheguri. ...Respondent.

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Mr.V.G. Mujumdar for the Petitioners.

Mr.A.M.Kulkarni for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 7, 2006.

P.C. :

The suit for eviction came to be decreed by the Court of Small Causes of Pune only to the extent of allowing the claim for the recovery of arrears. The Additional District Judge remanded the matter back to the Trial Court for a fresh determination in the light of the procedure contemplated under Rule 9(C) of the Bombay Rents, Hotel & Lodging House Rates Control Rules, 1948. The Appellate Court was of the view that it was

necessary that proper issues be framed before the Trial Court. That order has been impugned in these proceedings.

The attention of the Court has been drawn on behalf of the Respondent to proceedings which have already taken place before the Trial Court upon remand. After the order of remand, an application was filed by the Respondent for amendment of the plaint on the ground of bonafide requirement and on the allegation that there was an illegal parting of possession and permanent construction. The Trial Court allowed the application. The Petitioner filed an additional written statement to the amended pleadings. This was between June and August 2005. The Trial Court framed issues on 1st September 2005. The application filed by the Petitioner for the amendment of the written statement was allowed on 7th November 2005 and the Petitioner filed an amended written statement. An affidavit was filed on behalf of the Respondent in lieu of Examination-in-Chief and the Petitioner cross-examined the Respondent on 28th November 2005 and 1st December 2005. The Petitioner made an application for appointment of a Court Commissioner which was rejected by the Trial Court on 2nd

January 2006. This was followed by another application for producing certain documents which was also rejected. The second witness, P.W.2, has also been cross-examined.

Having regard to the circumstances that the trial has already substantially progressed after the order of remand, interference of this Court under Article 227 of the Constitution is not warranted at the present stage. However, while dismissing the petition, it is clarified that it would be open to the Petitioner to challenge the final decree and order on all counts. Should it be necessary for the Petitioner to approach this Court at any stage, it would be open to the Petitioner to question the order of remand. Subject to the aforesaid observations, the petition is dismissed. The time fixed by the Appellate Court for the conclusion of trial is extended by a further period of six months from today.

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